

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
Petition by Wisconsin RSA #4 Limited	)	
Partnership, Wausau Cellular Telephone	)	
Limited Partnership, Nsighttel Wireless,	)	
LLC, and Metro Southwest PCS, LLP	)	
For Commission Agreement in	)	
Redefining the Service Areas of Rural	)	
Telephone Companies in the State of	)	
Wisconsin Pursuant to 47 C.F.R.	)	
Section 54.207(c)	)	

**PETITION FOR COMMISSION AGREEMENT IN REDEFINING THE  
SERVICE AREAS OF RURAL TELEPHONE COMPANIES IN WISCONSIN**

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### Summary

Wisconsin RSA #4 Limited Partnership, Wausau Cellular Telephone Limited Partnership, Nsighttel Wireless, LLC, and Metro Southwest PCS, LLP (the “Cellcom Companies”), request the Commission’s concurrence with the proposal by the Wisconsin Public Service Commission (“WPSC”) to redefine the service areas of Marquette-Adams Telephone Cooperative, Inc., Niagara Telephone Company, and Wittenberg Telephone Company, pursuant to the process set forth in Section 54.207(c) of the Commission’s rules.

The Cellcom Companies provide PCS and cellular service in Wisconsin and were recently designated as eligible telecommunications carriers (“ETC”) pursuant to Section 214(e) of the Act. By granting ETC status to the Cellcom Companies, the WPSC found that the use of federal high-cost support to develop their competitive operations would serve the public interest. Because the FCC-licensed service territory of each of the Cellcom Companies does not correlate with rural incumbent local exchange carrier (“ILEC”) service areas, the Act provides that the affected ILEC service areas must be redefined before designation in certain areas can take effect. Accordingly, the WPSC has proposed that each partially-covered rural ILEC service area should be redefined in a manner that permits the designation of the Cellcom Companies to become effective throughout the portions of the ILEC service area in which each is licensed to provide service. Consistent with the WPSC’s order and with previous actions taken by the FCC and several other states, redefinition is requested such that each wire center of the affected ILECs is reclassified as a separate service area.

The proposed redefinition is warranted under the Commission’s competitively neutral universal service policies, and it constitutes precisely the same relief granted to similarly situated carriers by the Commission and several states. Unless the relevant ILEC service areas are

redefined, the Cellcom Companies will be unable to use high-cost support to improve and expand service to consumers in many areas of their licensed service territories and consumers will be denied the benefits. As the Commission and several states have consistently held, competitive and technological neutrality demand the removal of these artificial barriers to competitive entry. Moreover, the requested redefinition satisfies the analysis provided by the Federal-State Joint Board on Universal Service (“Joint Board”) in that it eliminates the payment of uneconomic support or cream-skimming opportunities, duly recognizes the special status of rural carriers under the Act, and does not impose undue administrative burdens on ILECs.

The WPSC’s proposed redefinition is well-supported by the record at the state level, and all affected parties were provided ample opportunity to ensure that the Joint Board’s recommendations were taken into account. Accordingly, the Cellcom Companies request that the Commission grant its concurrence expeditiously and allow the proposed redefinition to become effective without further action.

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Wisconsin RSA #4 Limited Partnership (“RSA #4”), Wausau Cellular Telephone Limited Partnership (“Wausau”), Nsighttel Wireless, LLC (“Nsighttel”), and Metro Southwest PCS, LLP (“Metro SW”) (collectively referred to as the “Cellcom Companies”), hereby submit this Petition seeking the FCC’s agreement with the decision of the Wisconsin Public Service Commission (“WPSC”) to redefine the service areas of Marquette-Adams Telephone Cooperative, Inc., Niagara Telephone Company, and Wittenberg Telephone Company, rural incumbent local exchange carriers (“ILECs”) doing business in Wisconsin. The Cellcom Companies provide PCS and cellular service to consumers in Wisconsin and were recently granted eligible

telecommunications carrier (“ETC”) status by the WPSC pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”). As set forth below, classifying each individual wire center of the affected ILECs as a separate service area will foster federal and state goals of encouraging competition in the telecommunications marketplace and extending universal service to rural Wisconsin’s consumers.

## **I. BACKGROUND**

Pursuant to Section 214(e) of the Communications Act of 1934, as amended (the “Act”), state commissions generally have authority to designate carriers that satisfy the requirements of the federal universal service rules as ETCs and to define their service areas.<sup>1</sup> In rural areas, service areas are generally defined as the ILEC’s study area. However, the Act explicitly sets forth a process whereby a competitive ETC may be designated for a service area that differs from that of the ILEC. Specifically, Section 214(e) of the Act provides:

... “service area” means such company’s “study area” unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.<sup>2</sup>

The FCC and the Federal-State Joint Board on Universal Service (“Joint Board”) have recognized that a strict rule requiring a competitive ETC to serve an area exactly matching a rural LEC’s study area would preclude competitive carriers that fully satisfy ETC requirements from bringing the benefits of competition to consumers throughout their service territory.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. § 214(e).

<sup>2</sup> *Id.*

<sup>3</sup> See *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion and Order, 15 FCC Rcd 9924, 9927 n. 40

Therefore, the FCC established a streamlined procedure for the FCC and states to act together to redefine rural ILEC service areas.<sup>4</sup> Using this procedure, the FCC and state commissions have applied the analysis contained in Section 214(e) and concluded that it is necessary and appropriate to redefine the LEC service areas along wire center boundaries to permit the designation of competitive ETCs in those areas.<sup>5</sup>

The Cellcom Companies, along with Wisconsin RSA #10 ("RSA #10") and Brown County MSA Cellular Limited Partnership ("Brown County MSA"), are wholly-owned subsidiaries of Northeast Communications of Wisconsin, Inc. d/b/a Nsight Tel services, a closely held company based in Green Bay. On November 21, 2002, RSA #10, Brown County MSA, and the Cellcom Companies petitioned the WPSC for ETC status for purposes of receiving high-cost support from the federal universal service fund. The WPSC granted their petitions on September 30, 2003, concluding that a grant of ETC status to each of the companies was in the public interest.<sup>6</sup>

Additionally, because the companies are authorized to serve along licensed boundaries that do not match the service areas of the affected ILECs, the WPSC invoked a Wisconsin Administrative Code provision requiring federal-state concurrence in the definition of a service area as something other than a rural ILEC's entire study area. Wisc. Admin. Code § PSC

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(1999) ("*Washington Redefinition Order*"), citing *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 181 (1996) ("*Joint Board Recommended Decision*").

<sup>4</sup> See 47 C.F.R. § 54.207(c). See also *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8881 (1997) ("*First Report and Order*").

<sup>5</sup> See, e.g., *Public Notice, Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. On Tribal Lands Within the State of Arizona*, DA 01-409 (rel. Feb. 15, 2002) (effective date May 16, 2002); *Washington Redefinition Order*, *supra*, 15 FCC Rcd at 9927-28.

<sup>6</sup> Copies of the orders are attached hereto as Exhibits A-D for the Commission's reference.

160.13(2).<sup>7</sup> In accordance with that rule, the WPSC conditioned ETC status in rural ILEC areas that are only partially covered by the licensed areas of individual companies on FCC concurrence with the redefinition of those rural ILEC service areas pursuant to the process established under Section 54.207(c) of the Act, 47 C.F.R. § 54.207(c). The WPSC directed the companies to petition the FCC for concurrence with the redefinition of the affected ILEC service areas.<sup>8</sup>

Within the last 18 months, ALLTEL Communications, Inc. (“ALLTEL”), CTC Telecom (“CTC”), Inc., and American Cellular Corporation (“American Cellular”) have all filed petitions to redefine various rural ILEC service areas in Wisconsin pursuant to the WPSC’s directives and the FCC’s rules.<sup>9</sup> A grant of either the ALLTEL or American Cellular petition would result in redefinition of all of the areas needed for the conditional designations of RSA #10 and Brown County MSA to take effect without further action. RSA #10 and Brown County MSA therefore support a prompt grant of the ALLTEL and American Cellular petitions and do not join in the instant Petition. Moreover, a grant of either the ALLTEL or American Cellular petition would result in the redefinition of areas needed by the Cellcom Companies for their conditional designations to take effect in several rural ILEC areas, as follows:

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<sup>7</sup> This provision tracks the redefinition language found in Section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5).

<sup>8</sup> *Id.* at p. 18.

<sup>9</sup> See Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Wisconsin, CC Docket No. 96-45 (Nov. 21, 2003), amended Nov. 26, 2003, and supplemented March 26 and May 14, 2004; *Public Notice*, The Wireline Competition Bureau Seeks Comment on ALLTEL’s Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin, DA 03-3876 (rel. Dec. 4, 2003); *Public Notice*, Wireline Competition Bureau Initiates Proceeding to Consider the ALLTEL Communications, Inc. Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin, DA 04-565 (rel. Feb. 26, 2004); American Cellular Corp., Petition for Agreement in Redefining the Service Area Requirement for Certain Rural Telephone Company Study Areas in the State of Wisconsin pursuant to 47 C.F.R. § 54.207(c), CC Docket No. 96-45 (July 16, 2004); *Public Notice*, The Wireline Competition Bureau Seeks Comment on Petition to Redefine Certain Rural Telephone Company Service Areas in the State of Wisconsin, DA 04-2191 (rel. July 21, 2004); *Public Notice*, Wireline Competition Bureau Initiates Proceeding to Consider Petition to Redefine a Rural Telephone Company Service Area in the State of Wisconsin, DA 04-3200 (rel. Oct. 6, 2004).



<b><u>ILEC Study Area</u></b>	<b><u>Cellcom Company Affected</u></b>	<b><u>Petitioner(s) for Redefinition</u></b>
Amherst Tel. Co.	Wausau, Metro SW	American Cellular
Central State Tel. Co.	Wausau, Nsighttel, Metro SW	ALLTEL, American Cellular
CenturyTel-Central WI	Nsighttel, Metro SW	ALLTEL, American Cellular
CenturyTel – Kendall	RSA #4, Nsighttel, Metro SW	ALLTEL, American Cellular
CenturyTel-MW-Cencom	Nsighttel, Metro SW	American Cellular
CenturyTel-MW-NW	RSA #4, Nsighttel, Metro SW	ALLTEL, American Cellular
CenturyTel-MW-Wayside	Nsighttel	ALLTEL, American Cellular
CenturyTel – N. Wisc.	Nsighttel, Metro SW	ALLTEL
Midway – TDS	Wausau, Metro SW	ALLTEL
Northeast Tel. Co.	RSA #4, Metro SW	ALLTEL, American Cellular
Tel. USA of WI	RSA #4, Nsighttel, Metro SW	ALLTEL, American Cellular
Stockbridge & Sherwood	Nsighttel	ALLTEL

Those areas have been omitted from this Petition to avoid the redundancy of the same rural ILEC service area being redefined several times over. With respect to those areas, the Cellcom Companies urge the Commission to issue a prompt grant of the ALLTEL and American Cellular petitions for the reasons articulated herein and in the petitions and related pleadings submitted by those petitioners.<sup>10</sup>

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<sup>10</sup> As shown above, American Cellular needlessly requested redefinition of several rural ILECs that would be redefined by a grant of ALLTEL's previously-filed petition. The CTC petition also seeks redefinition of service areas that were included in ALLTEL's petition. The FCC should take action to reduce the number of redundant and overlapping redefinition petitions by clarifying that the redefinition of a rural ILEC's service area along wire-center boundaries obviates the need for further redefinition for future competitive ETCs. See *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1582 (2004) ("*Virginia Cellular*") ("We define the affected service areas . . . to determine the

The Cellcom Companies now submit this Petition to obtain the FCC's concurrence with the rural ILEC service areas not addressed by the ALLTEL or American Cellular petitions, in accordance with the WPSC's rules, the Act, and the FCC's rules.

## **II. DISCUSSION**

The WPSC's proposal to redefine rural ILEC service areas is consistent with FCC rules, the recommendations of the Joint Board, and the competitively neutral universal service policies embedded in the Act. Specifically, redefinition along wire-center boundaries will promote competition and the ability of rural consumers to have similar choices among telecommunications services and at rates that are comparable to those available in urban areas.<sup>11</sup> The proceedings at the state level provided all affected parties with an opportunity to comment on the proposed redefinition, and the WPSC fully considered and addressed the parties' arguments on this subject. The redefinition proposed herein is well supported by the record at the state level, and the WPSC's well-reasoned ETC designation order provides the FCC with ample justification to concur.

### **A. The Requested Redefinition Is Consistent With Federal Universal Service Policy.**

Congress, in passing the 1996 amendments to the Act, declared its intent to "promote competition and reduce regulation" and to "encourage the rapid deployment of new telecommunications technologies."<sup>12</sup> As part of its effort to further these pro-competitive goals,

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portions of rural service areas in which to designate Virginia Cellular and future competitive carriers seeking ETC designation in the same rural service areas"). The FCC took an appropriate step in this direction by approving the withdrawal of Midwest Wireless Wisconsin, L.L.C.'s petition for redefinition, which was redundant due to overlaps with ALLTEL's petition. *See Federal-State Joint Board on Universal Service, Order*, 19 FCC Rcd 2945 (2004).

<sup>11</sup> See 47 U.S.C. § 254(b)(3).

<sup>12</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) (preamble).

Congress enacted new universal service provisions that, for the first time, envision multiple ETCs in the same market.<sup>13</sup> In furtherance of this statutory mandate, the FCC has adopted the principle that universal service mechanisms be administered in a competitively neutral manner, meaning that no particular type of carrier or technology should be unfairly advantaged or disadvantaged.<sup>14</sup>

Consistent with this policy, the FCC and many state commissions have affirmed that ETC service areas should be defined in a manner that removes obstacles to competitive entry.<sup>15</sup> Last year, for example, the FCC granted a petition of the Colorado Public Utilities Commission (“CPUC”) for a service area redefinition identical in all material respects to the redefinition proposed in this Petition.<sup>16</sup> In support of redefining CenturyTel’s service area along wire-center boundaries, the CPUC emphasized that “in CenturyTel’s service area, no company could receive a designation as a competitive ETC unless it is able to provide service in 53 separate, non-contiguous wire centers located across the entirety of Colorado . . . [T]his constitutes a significant barrier to entry.”<sup>17</sup> The FCC agreed and, by declining to open a proceeding, allowed

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<sup>13</sup> See 47 U.S.C. § 214(e)(2).

<sup>14</sup> See *First Report and Order*, *supra*, 12 FCC Rcd at 8801. Competitive neutrality is a “fundamental principle” of the FCC’s universal service policies. *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, CC Docket No. 96-45, DA 03-1169 at ¶ 7 (Tel. Acc. Pol. Div. rel. April 17, 2003). Moreover, competitive neutrality was not among the issues referred by the FCC to the Joint Board. See *Federal-State Joint Board on Universal Service*, FCC 02-307 (rel. Nov. 7, 2002) (“*Referral Order*”).

<sup>15</sup> See, e.g., *First Report and Order*, *supra*, 12 FCC Rcd at 8880-81; Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 C.F.R. § 54.207(c) at p. 4 (filed with the FCC Aug. 1, 2002) (“CPUC Petition”).

<sup>16</sup> See CPUC Petition at p. 5 (“Petitioner requests agreement to redefine CenturyTel’s service area to the wire center level”).

<sup>17</sup> CPUC Petition at p. 4.

the requested redefinition to take effect.<sup>18</sup> The FCC similarly approved a petition by the Washington Utilities and Transportation Commission (“WUTC”) and about 20 rural ILECs for the redefinition of the ILECs’ service areas along wire center boundaries, finding that:

[O]ur concurrence with rural LEC petitioners’ request for designation of their individual exchanges as service areas is warranted in order to promote competition. The Washington Commission is particularly concerned that rural areas . . . are not left behind in the move to greater competition. Petitioners also state that designating eligible telecommunications carriers at the exchange level, rather than at the study area level, will promote competitive entry by permitting new entrants to provide service in relatively small areas . . . We conclude that this effort to facilitate local competition justifies our concurrence with the proposed service area redefinition.<sup>19</sup>

In Washington, several competitive ETCs have been designated in various service areas without any apparent adverse consequences to date.<sup>20</sup>

Other state commissions have similarly concluded that redefining rural ILEC service areas along wire center boundaries is fully justified by the pro-competitive goals of the 1996 Act. For example, the Minnesota Public Utilities Commission (“MPUC”) approved the proposal by WWC Holding Co., Inc. d/b/a CellularOne to redefine certain rural ILEC service areas to the wire center level.<sup>21</sup> Addressing the concerns expressed by ILEC commenters, the MPUC

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<sup>18</sup> CenturyTel has petitioned the FCC to reconsider its decision. However, as of this date CenturyTel’s service area redefinition is effective.

<sup>19</sup> *Washington Redefinition Order, supra*, 15 FCC Rcd at 9927-28 (footnotes omitted).

<sup>20</sup> Sprint Corp. d/b/a Sprint PCS et al., Docket No. UT-043120 at p. 11 (Wash. Util. & Transp. Commn., Jan. 13, 2005) (stating that the WUTC’s designation of multiple competitive ETCs, “if not benefiting customers (which it does), certainly is not failing customers. In the five years since we first designated an additional ETC in areas served by rural telephone companies, the Commission has received only two customer complaints in which the consumers alleged that a *non*-rural, wireline ETC was not providing service. No Rural ILEC has requested an increase in revenue requirements based on need occasioned by competition from wireless or other ETCs. This record supports our practice of not seeking commitments or adding requirements as part of the ETC designation process.”).

<sup>21</sup> WWC Holding Co., Inc. d/b/a CellularOne, MPUC Docket No. P-5695/M-04-226, Order Approving ETC Designation (Minn. PUC, Aug. 19, 2004) (FCC concurrence granted Dec. 28, 2004).

concluded that the proposed redefinition would neither harm the affected rural ILECs nor create significant cream-skimming opportunities.<sup>22</sup> The FCC agreed, and allowed the proposed redefinition to enter into effect. Similar conclusions were reached by state regulators in Arizona, Colorado, New Mexico, Kansas, Maine, Michigan, North Dakota, Oregon, and West Virginia.<sup>23</sup>

As in those cases, the redefinition requested in the instant proceeding will enable the Cellcom Companies to make the network investments necessary to bring competitive service to people in nearly all of their licensed service areas. Redefinition will therefore benefit Wisconsin's rural consumers, who will begin to see a variety in pricing packages and service options on par with those available in urban and suburban areas.<sup>24</sup> They will see infrastructure investment in areas formerly controlled solely by ILECs, which will bring improved wireless service and important health and safety benefits associated with increased levels of

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<sup>22</sup> *Id.* at p. 9.

<sup>23</sup> See NPI-Omnipoint Wireless, LLC, Case No. U-13714 (Mich. PSC, Aug. 26, 2003) (FCC concurrence granted Feb. 1, 2005) ("NPI-Omnipoint Order"); Highland Cellular, Inc., Case No. 02-1453-T-PC, Recommended Decision (W.V. PSC Sept. 15, 2003), *aff'd* by Final Order Aug. 27, 2004 (FCC concurrence granted Jan. 24, 2005) ("Highland W.V. Order"); Cellular Mobile Systems of St. Cloud, Docket No. PT6201/M-03-1618 (Minn. PUC, May 16, 2004) (FCC concurrence granted Oct. 7, 2004) ("CMS Minnesota Order"); United States Cellular Corp., Docket 1084 (Oregon PUC, June 24, 2004) (FCC concurrence granted Oct. 11, 2004) ("USCC Oregon Order"); Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2000) (FCC concurrence granted May 16 and July 1, 2001) ("SBI Arizona Order"); Smith Bagley, Inc., Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation (N.M. Pub. Reg. Comm'n Aug. 14, 2001, adopted by Final Order (Feb. 19, 2002) (FCC concurrence granted June 11, 2002) ("SBI N.M. Order"); RCC Minnesota, Inc., Docket No. 04-RCCT-338-ETC (Kansas Corp. Comm'n, Sept. 30, 2004) (FCC concurrence pending) ("RCC Kansas Order"); RCC Minnesota, Inc. et al., Docket No. 2002-344 (Maine PUC May 13, 2003) (FCC concurrence pending) ("RCC Maine Order"); Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al., Case No. PU-1226-03-597 et al. (N.D. PSC, Feb. 25, 2004) (FCC concurrence pending) ("Northwest Dakota Order"); In the Matter of the Application of N.E. Colorado Cellular, Inc., to Re-define the Service Area of Eastern Slope Rural Telephone Association, Inc.; Great Plains Communications, Inc.; Plains Cooperative Telephone Association, Inc.; and Sunflower Telephone Co., Inc., Docket No. 02A-444T (ALJ, May 23, 2003), *aff'd* by Colo. PUC Oct. 2, 2003 (FCC concurrence pending) ("Colorado Redefinition Order").

<sup>24</sup> See 47 U.S.C. § 254(b)(3).

radiofrequency coverage.<sup>25</sup> Redefinition will also remove a critical obstacle to competition, consistent with federal telecommunications policy.<sup>26</sup>

**B. The Requested Redefinition Satisfies the Three Joint Board Factors Under Section 54.207(c)(1) of the Commission's Rules.**

A petition to redefine an ILEC's service area must contain "an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company."<sup>27</sup> In the *Recommended Decision* that laid the foundation for the FCC's *First Report and Order*, the Joint Board enumerated three factors to be considered when reviewing a request to redefine a LEC's service area.<sup>28</sup>

First, the Joint Board expressed concern as to whether the competitive carrier is attempting to "cream skim" by only proposing to serve the lowest cost exchanges.<sup>29</sup> As a wireless carrier, the Cellcom Companies are restricted to providing service in those areas where they are licensed by the FCC. The Cellcom Companies are not picking and choosing the lowest-cost exchanges; on the contrary, the WPSC designated each of the Cellcom Companies for an ETC service area that is based on the geographic limitations of their licensed service territories, and the WPSC made the affirmative finding that the Cellcom Companies will offer service to

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<sup>25</sup> See *RSA #4 Order* at pp. 8-9; *Wausau Order* at p. 9; *Nsighttel Order* at pp. 8-9; *Metro SW Order* at p. 8.

<sup>26</sup> See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (stating that the 1996 Act was designed to create "a pro-competitive, de-regulatory national policy framework" aimed at fostering rapid deployment of telecommunications services to all Americans "by opening *all telecommunications markets* to competition...")(emphasis added).

<sup>27</sup> 47 C.F.R. § 54.207(c)(1).

<sup>28</sup> *Joint Board Recommended Decision*, *supra*

<sup>29</sup> See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

customers throughout their designated ETC service areas upon reasonable request. The Cellcom Companies have not attempted to select areas to enter based on support levels.

The WPSC noted that opportunities for receiving uneconomic levels of support are further diminished by the FCC's decision to allow rural ILECs to disaggregate support below the study-area level.<sup>30</sup> By moving support away from low-cost areas and into high-cost areas, ILECs have had the ability to minimize or eliminate cream-skimming and the payment of uneconomic support to competitors.<sup>31</sup> Furthermore, any ILECs that failed to disaggregate support effectively may modify their disaggregation filings subject to state approval.<sup>32</sup>

The Cellcom Companies have taken the opportunity to review the disaggregation filings submitted by the affected Wisconsin ILECs. Two of the ILECs – Niagara and Wittenberg – elected to disaggregate support to one or two cost zones per wire center under Path 3 by self-certifying disaggregation plans that went into effect immediately upon being filed.<sup>33</sup> These plans have effectively moved higher levels of support away from lower-cost, higher-density areas and to areas where costs are higher and service is needed most – thus reducing or eliminating the possibility of RSA #4, Wausau, and Metro SW receiving uneconomic support.<sup>34</sup> To the extent the FCC has expressed concerns that disaggregation may not protect against cream-skimming

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<sup>30</sup> See, e.g., *RSA #4 Order* at pp. 11-12. See also *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11302-09 (2001) ("*Fourteenth Report and Order*").

<sup>31</sup> See *Federal-State Joint Board on Universal Service, Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order*, 16 FCC Rcd 18133, 18141(2001).

<sup>32</sup> See 47 C.F.R. §§ 54.315(b)(4); 54.315(c)(5), 54.315(d)(5).

<sup>33</sup> A checklist of disaggregation filings made by Wisconsin ILECs and the corresponding maps of cost zones are available on USAC's web site at <http://www.universalservice.org/hc/disaggregation>.

<sup>34</sup> See *Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11302.

where population densities vary greatly throughout the study area,<sup>35</sup> those concerns are absent here because there is no great variation among wire centers in Niagara's or Wittenberg's study area.<sup>36</sup> Moreover, the FCC's concern that population density figures "do not take into account cost variability within specific wire centers, which may be particularly acute in rural areas"<sup>37</sup> is similarly inapplicable here, since each carrier has disaggregated to multiple cost zones within individual wire centers.

Only Nsighttel's service area includes areas served by an ILEC that opted against disaggregating support, Marquette-Adams Telephone Company ("Marquette"). This ILEC evidently believed that the existing apportionment of support corresponded with costs and there were no significant cost disparities that needed to be addressed. If Marquette nonetheless has concerns about cream skimming or uneconomic support as a result of Nsighttel's designation, it may file for WPSC approval of a new disaggregation plan that removes such opportunities.<sup>38</sup> Moreover, Nsighttel is proposing to serve the two lower-density wire centers in Marquette's study area, dispelling any concerns about potential cream-skimming under the FCC's *Virginia Cellular* analysis.<sup>39</sup> Specifically, the two Marquette wire centers within Nsighttel's ETC service

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<sup>35</sup> *Highland Cellular, Inc.*, 19 FCC Rcd 6422, 6437 (2004) ("*Highland Cellular*") ("[B]ecause Verizon South's study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities.").

<sup>36</sup> Niagara's four wire centers, Aurora, Florence, Niagara, and Spreadeagle, have respective population densities of 25.3, 27.5, 41.3, and 35.2 persons per square mile. Wittenberg's two wire centers, Elderon and Wittenberg, have respective population densities of 20.6 and 34.1 persons per square mile. In *Highland Cellular*, by contrast, the population densities of the affected Verizon South wire centers ranged from 18 to 143 persons per square mile. *Highland Cellular*, *supra*, 19 FCC Rcd at 6437 n.97.

<sup>37</sup> *Id.*

<sup>38</sup> See 47 C.F.R. § 54.315(b)(4).

<sup>39</sup> See *Virginia Cellular*, *supra*, 19 FCC Rcd at 1578-80.



area, Brooks and Oxford, have respective population densities of 27.1 and 30.65 persons per square mile, while the two remaining wire centers, Endeavor and Packwaukee, have respective population densities of 41.7 and 77.2 persons per square mile. Accordingly, there is no risk of cream-skimming by Nsighttel in Marquette's study area.

Second, the Joint Board recommended that the FCC and the States consider the rural carrier's special status under the 1996 Act.<sup>40</sup> In reviewing the Cellcom Companies' petitions for ETC designation, the WPSC weighed numerous factors in ultimately determining that such designation was in the public interest. Congress mandated this public-interest analysis in order to protect the special status of rural carriers in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.<sup>41</sup> No action in this proceeding will affect or prejudge any future action the WPSC or the FCC may take with respect to any ILEC's status as a rural telephone company, and nothing about service area redefinition will diminish an ILEC's status as such.

Third, the Joint Board recommended that the FCC and the States consider the administrative burden a rural ILEC would face.<sup>42</sup> In the instant case, the Cellcom Companies' request to redefine the affected rural ILECs' service areas along wire center boundaries is made solely for ETC designation purposes. Defining the service area in this manner will in no way impact the way the affected rural ILECs calculate their costs, but is solely to enable the Cellcom Companies to begin receiving high-cost support in those areas in the same manner as the ILECs.

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<sup>40</sup> See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

Rural ILECs may continue to calculate costs and submit data for purposes of collecting high-cost support in the same manner as they do now.

Should Marquette now choose to disaggregate support out of concerns about cream-skimming by Nsighttel or any other carrier, this disaggregation of support will not represent an undue administrative burden. The FCC placed that burden on rural ILECs in its *Fourteenth Report and Order* independent of service area redefinition and made no mention of this process being a factor in service area redefinition requests. To the extent Marquette may find this process burdensome, the benefit of preventing cream skimming and the importance of promoting competitive neutrality will outweigh any administrative burden involved.

In sum, the proposed redefinition fully satisfies both the Joint Board's recommendations and the *Virginia Cellular* analysis.

**C. The Proposed Redefinition Along Wire-Center Boundaries Is Consistent With the FCC's "Minimum Geographic Area" Policy.**

In its April 2004 *Highland Cellular* decision, the FCC declared that an entire rural ILEC wire center "is an appropriate minimum geographic area for ETC designation".<sup>43</sup> As set forth in the orders attached as Exhibits A-D hereto, the Cellcom Companies' designated ETC service areas do not include any partial rural ILEC wire centers. Accordingly, the instant request for concurrence with redefinition to the wire-center level, and not below the wire center, is consistent with FCC policy.

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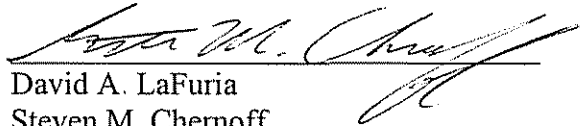
<sup>43</sup> *Highland Cellular*, *supra*, 19 FCC Rcd at 6438.

### III. CONCLUSION

The Cellcom Companies stand ready to provide reliable, high-quality telecommunications service to Wisconsin's rural consumers by investing federal high-cost support in building, maintaining and upgrading wireless infrastructure throughout their licensed service territories, thereby providing facilities-based competition in many of those areas for the very first time. The WPSC has found that the Cellcom Companies' use of high-cost support will increase the availability of additional services and increase investment in rural Wisconsin and therefore serve the public interest. Yet, without the FCC's concurrence with the rural ILEC service area redefinition proposed herein, the Cellcom Companies will not be able to bring those benefits to consumers in many areas in which they are authorized by the FCC to provide service. The redefinition requested in this Petition will enable the Cellcom Companies' ETC designations to take effect throughout their licensed service territories in Wisconsin.

The relief proposed herein is exactly the same in all material respects as that granted by the FCC and state commissions to numerous other carriers throughout the country, and the FCC is well within its authority to grant its prompt concurrence. The Cellcom Companies submit that the benefits of permitting their ETC designations to take effect throughout their proposed service areas are substantial, and those benefits will inure to rural consumers who desire the Cellcom Companies' service, particularly those consumers who are eligible for Lifeline and Link-Up benefits and currently have no choice of service provider. Accordingly, the Cellcom Companies request that the Commission grant its concurrence with the WPSC's decision to redefine the rural ILEC service areas so that each of the wire centers listed in Exhibit E hereto constitutes a separate service area.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven M. Chernoff", is written over a horizontal line.

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February 9, 2005

**CERTIFICATE OF SERVICE**

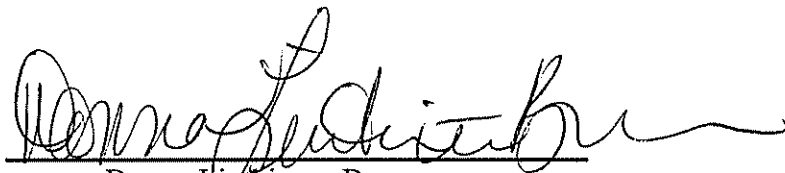
I, Donna L. Brown, hereby certify that on this 9<sup>th</sup> day of February, 2005, copies of the foregoing **PETITION FOR COMMISSION AGREEMENT IN REDEFINING THE SERVICE AREAS OF RURAL TELEPHONE COMPANIES IN WISCONSIN** were placed in the United States mail, via first-class, postage pre-paid to:

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